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JAN 11 1957
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1956.

No. 641.

PAUL HAMMERS,
Petitioner,

vs.

THE BOARD OF FIRE AND POLICE COMMISSIONERS
of the City of Mattoon, Illinois, a
Municipal Corporation,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois, Cause No. 34,163.
There Heard on Appeal from the Appellate Court of Illinois, Third District.

REPLY BRIEF OF PETITIONER FOR WRIT OF CERTIORARI.

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May It Please the Court:

The respondent Board fully realizes that it, and it alone, filed all of the charges in this case, and it realizes that the law is well settled that the Board cannot be both accuser and judge. It is interesting to note that the

Board does not cite one single case in an attempt to contradict that well settled rule.

How, then, does the Board meet our argument that the Board prepared and filed the charges, and then sat as judge over its own charges? The answer: They attempt to maneuver and manipulate the record by arguing that charges two through six were withdrawn! But the only reference to that "withdrawal" made by the Board in its Brief is to page 11 of the Abstract. But that reference is to the **decision** (Abstract p. 11). Therefore, the first time that anyone, including the Board's counsel, knew that those charges were "withdrawn" was when the accuser wrote its decision as the hearing and determining tribunal. What an unfair attempt by the hearing tribunal to protect its decision and to sustain the charges which it had prepared, signed and filed!

Certainly no hearing tribunal or court can properly and honestly say that any charge is withdrawn when the record does not disclose that withdrawal. The record does not indicate that counsel for either side withdrew the charges, or that either counsel knew that a withdrawal was even anticipated, and Respondent in its Brief does not so contend. Therefore, the Respondent Board—**the accuser which was so anxious to sustain its own accusations**—manipulates and maneuvers and shifts the evidence and says that charges two through six were withdrawn. They were not withdrawn in the record, and the record so shows. Respondent's Brief does not contend to the conrary.

Please note that the Board rested its case (the accuser-judge calls the case "its case") at page 56 of the Abstract. Respondent (Petitioner here) rested his case at page 87 of the Abstract. And evidence on charges two through six, the charges which Respondent Board says were "withdrawn," were heard throughout the entire record. There

is nothing in the record to indicate that the Board withdrew any charges when it rested its case at page 56 of the Abstract, or when Hammers (Petitioner here) rested his case at page 87 of the Abstract.

To prove this point we point out the pages in the Abstract on which evidence was heard on charges two to six in order to prove that Mr. Hammers was tried on all six charges from the beginning of the hearing through to the time when both sides rested.

Evidence was heard on charges two through six on pages of the Abstract as indicated in the following digest:

Charge Two: That Hammers, petitioner here, used profane language and was guilty of insubordination, pages 79 and 84.

Charge Three: That Hammers devoted time while on duty to sale of used cars, pages 28, 29, 30, 31, 34, 35, 37, 38, 56, 57, 58, 60, 63, 70, 83, 85, 86.

Charge Four: That Hammers shirked his duties during an altercation at the Star Cafe, pages 41, 42, 43, 60, 61, 63, 70, 71, 72, 79, 83. And at the close of all the evidence the Board had admitted its Exhibit Four as a part of its evidence on the Star Cafe incident (Abstract page 88). And please note that both sides had rested at page 87 of the abstract, and there had been no withdrawal of any of the charges.

Charge Five: That Hammers shirked his duties during a disturbance at the Russell Tomer home, pages 52, 53, 54, 55, 56, 60, 61, 66, 67, 68, 69, 81, 82, 83, 86.

Charge Six: That Hammers took, without permission, a loaf of bread that had been left at the police station, pages 35, 36, 37, 39, 40, 60, 61, 72, 76, 80.

It is obvious, therefore, that all six charges were tried from the beginning of the record at page 22 of the Ab-

stract to the closing of the evidence at page 87 of the Abstract, and that they were tried before and decided by the accuser, thereby depriving Officer Hammers of due process of law.

On page 4 of Respondent's Brief it is argued that the Respondent Board did not act as accuser, but that the charges were brought by Larkin Jones, the former chief of police. The Board, in attempting to defend its action now resorts to argument which is disproven by the record. Pages 2 to 8 of the Abstract show that the charges were prepared on the letterhead stationery of the Board, prepared by the Board, and signed by the three Board members (Abstract page 8). Yes, signed by the members of the Board which had just been reversed by the Illinois Appellate Court in the same case (Abstract page 2), and the Board that was so anxious to sustain its new charges that it attempted to shift, maneuver, and manipulate the record in an attempt to hide the fact that it was both accuser and judge!

CONCLUSION.

This maneuvering and manipulating makes it all the more necessary that in considering this case serious consideration needs to be given the language of this Court in **In re Murcheson, 349 U. S. 133, 136, 75 S. Ct. 623,** where this Court said in part:

> "A fair trial in a fair tribunal is a basic requirement of due process. . . . But our system of law has always endeavored to prevent even the probability of unfairness. . . . Every procedure which would offer a possible temptation to the awerage man as a judge . . . not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law. . . . But to perform its high function in the best way, justice must satisfy the appearance of justice."

The Respondent has clearly failed to show that it was not both accuser and judge, and we have proven beyond all doubt that such was the case.

Therefore, we respectfully submit that the Fourteenth Amendment has been grossly violated, and that the prayer of the Petition for Certiorari should be granted.

Respectfully submitted,

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